

1/23/71

Dear Emory,

Got your 1/21 at the post office this a.m. when I took my wife to town for grocery shopping and read it and the complaint while she did. I'm more rushed than I'd like to be because of a rather large legal job the government dumped on me, which has me getting up at 5 a.m. to work on it, so also please understand if the bad typing is worse than its usual bad and if I am more direct than I might be if I had time and could couch what I have to say more diplomatically.

You quote your attorney as saying you have a very good chance of getting what you seek. On the basis of the complaint, I'd say you have none, as I'll come to the reasons.

Apparently some of what I have written you hasn't registered. You here say, "...but even if we get an adverse decision, I feel this particular aspect of the assassination does need to be explored. Whatever the outcome, I will at least have made some contribution to the effort..." On all counts this is quite wrong. There is no aspect of the assassination that doesn't warrant exploration, but in each case we have to measure cost or the cost that can ultimately be involved. "If we get an adverse decision" can't be left to hang there. You can get an adverse decision that can become precedent and you can thereby ruin the prospects of ever getting anything. In several areas this aspect and therefore your case are very weak. These have to do with rights to privacy and protection of the innocent. If you lose and the case becomes precedent, you have done quite the opposite of contribute, and of this I encourage you to think long and hard.

The Archives list of released docs is incomplete. I can lend you the largely meaningless incomplete one or what would be better, wait for someone you do not know who is making an inventory to complete his. However, the Archives will, also provide you with lists, and I suggest you wait a month or so and ask, for you may thereby get an entirely different list. They pretended the declassification had been completed when they first wrote me, but I'm used to them by now and they finally replied that it wasn't and then they sent me another list. You can have them all, but unless you are in a great rush, I think it would be better if you did wait and then ask them and then we can compare lists. But you can't bring your basic list up to date with this because that was changed during the intervening years. I think that at nominal cost Paul Hoch can supply you with these changes. His address is 1735 Highland Pl., #25, Berkeley, Calif. 94709. I'll be sending him a carbon of this letter and a copy of Mitchell's to you. He can also let you know what he has on suspects and vice versa.

In evaluating my criticisms of the complaint, please understand, as your lawyer also will, that I am neither a lawyer nor qualified to give legal opinions. However, I have done some research and analysis, I know the material and I think Bud will tell you that often enough my hunches and approaches are correct.

To begin with you can't sue individuals under % U.S.C. 552, know you are not restricting yourself to this law, but I think they may successfully move to strike those or may claim your suit is thereby faulted.

III, 2: Defendant should not be Mitchell, should be D.J.

III, 3 It is wrong even to imply that there here was "investigation of federal crimes and related matters", for to do so is to grant in advance their invocation of the exception covering these things, and properly. There was no federal law-enforcement purpose in any of the FBI investigations in which you are interested and there was no law-enforcement authority for the WC (neither of which gets around rights to privacy and defamations).

III, 5 You left out the Dallas police, and the State police did virtually nothing. But I think this is irrelevant and wrongly put where it isn't. Your sole interest is in the FBI and their investigations were a) for the President and b) for the WC, neither for law-enforcement purposes.

iii, 7 The 26 are known as hearings and exhibits, not as the Report, and it was not "alleged" to "contain and/or refer to all (sic) materials and investigations..."

III,8: If all this stuff is referred to in the published materials, you have a good point under American Mail

I skip what you tried to obtain.

12. I think this is inaccurate. It suggests and means that what you seek is specifically required to be made available to you. You have not faced Mitchell's rather straight explanations of why he is refusing, and in the next par, 13, although you imply it, you do not say that you have exhausted your administrative remedies, which should be explicit and are required by the law.

I know of no provision of 5 U.S.C. 552 which permits recovery of costs and fees.

Although proof of service is not attached, I presume it was served. There being no reference to exhibits, I presume there were none. Compliance with what the law and regulations require of you is neither alleged nor proven, which may be a serious legal flaw, depending on how they are. At the least it may require more legal work and costs.

I am aware that the attorneys may feel they should not disclose their rebuttal of the government position in their complaint, but I see no evidence you have one, and that is very important if this suit is not to be a disaster for all of us. Understand that I know there is always federal contrivance for defense, that they invoke exemptions with flippancy and unreasonableness, but the areas of privacy and defamation are serious, can be properly cited, and people who are innocent should not be hurt. For this reason I have carefully skirted anything that can reasonably be so interpreted, and in the one aspect that gets close, I have been very careful and haven't yet filed the suit, so I can be even more careful and at the outset destroy any possibility of reasonable invocation of this exemption.

When, as you must, you prepare this defense, you should seek all the devil's advocates you can, even though it may mean work and trouble for others, for here I think you have a very good chance of failing and at the same time making it look like the government is genuinely interested in protecting peoples' rights, as the record proves false.

Except as it relates to local law-enforcement, you are on better ground to defend against this exemption, and part of Mitchell's argument is pretty far out.

I will be extremely interested in seeing how they respond. Bud also should get a copy of all papers they file, including exhibits and addenda, if any. It is too bad your lawyer couldn't have consulted with him in advance of filing, for some of the legal flaws could have been eliminated without problem, like suing the individuals, enough to get the case tossed out if no agency is also sued.

Sorry to seem to be a damper, but what good comes from kidding ourselves?

Hastily,

Harold Weisberg